It is *ultra vires* for a public-service company to engage in collateral undertakings. See 1 WYMAN, PUBLIC SERVICE COMPANIES, § 703. In cases of loans to a corporation, it has been suggested that the loaning is distinct from the *ultra vires* application of the proceeds. See 18 HARV. L. REV. 463. Yet it would seem that buying a commodity for the purpose of resale is part of a unit undertaking to trade in that commodity, and therefore *ultra vires* for a common carrier. Since the railroad could purchase large quantities of coal for its own consumption, the facts which make this contract a part of an *ultra vires* undertaking are not ascertainable from the charter or certificate of incorporation alone. In such a situation the corporation would be estopped to plead *ultra vires* against a plaintiff who had contracted and acted in ignorance of the facts. *Monument National Bank* v. *Globe Works*, 101 Mass. 57; *Miners' Ditch Co.* v. *Zellerbach*, 37 Cal. 543; *State Bank* v. *Hawkins*, 71 Fed. 369. See 3 THOMPSON, CORPORATIONS, § 2802. Upon these principles specific performance of a wholly executory contract has been granted, even in England. The case of a continuing contract, especially where, as here, the plaintiff has put himself in a position to perform, seems an even stronger one. *Eastern R. Co.* v. *Hawkes*, 5 H. of L. Cas. 331. Since it is the corporation's illegal purpose which taints the present contract, it is submitted that actual knowledge of the company's purpose, or something akin to wilful disregard of facts from which knowledge could be inferred, ought to be fastened on the plaintiff before the defense of *ultra vires* should be allowed to defeat recovery. *Colorado Springs Co.* v. *American Publishing Co.*, 97 Fed. 843; *Young* v. *United Zinc Cos.*, 198 Fed. 593. See THOMPSON, CORPORATIONS, §§ 2772, 2773 and note. However, the Supreme Court has been extremely averse to allowing any recovery on an *ultra vires* contract, even going so far as to declare that the corporation cannot act *ultra vires*. The requirement that an outsider, to obtain the benefit of the above doctrine, must first investigate the facts, seems in harmony with this inclination. Undoubtedly, though, this strict rule would not be extended to negotiable instruments, where negligence does not destroy the rights of a holder in due course. For a general discussion of executory *ultra vires* contracts, see 24 HARV. L. REV. 534.

CRIMINAL LAW — FORMER JEOPARDY — CONVICTION UNDER STATUTE PROVIDING NO PUNISHMENT. — The defendant was convicted of a statutory offense for which no punishment was prescribed, but for which he was deprived of certain civil rights. Being later indicted for the same acts under a different section of the code, he set up his former conviction as a bar. *Held*, that the plea discloses a valid defense. *Jenkins* v. *State*, 80 S. E. 688 (Ga. Ct. App.).

Although most state constitutions prohibit double jeopardy of life or liberty for the same offense, the meaning of the word "liberty" in such provisions has received but little construction. But the same word in the Fourteenth Amendment to the federal Constitution has been construed to mean not only freedom from imprisonment but rights to do ordinary acts. See *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589, 17 Sup. Ct. Rep. 427, 431; *Ex parte Virginia*, 100 U. S. 339, 344. But see 4 HARV. L. REV. 365. It would seem by analogy and from reason that "liberty" in double-jeopardy clauses should similarly be construed broadly. Decisions prohibiting double jeopardy of fines accord with this view. *Brink* v. *State*, 18 Tex. Cr. App. 344. A more extreme view is that a second trial after a conviction for which a valid sentence cannot be imposed is as obnoxious and oppressive as after an acquittal. See *Hartung* v. *People*, 26 N. Y. 167, 179. The case is distinguishable, however, from one where the former conviction was had upon a defective indictment; in such case the judgment itself is void. *People* v. *Larson*, 68 Cal. 18, 8 Pac. 517. The principal case seems clearly correct, for double jeopardy of punishment at least seems prohibited; and the loss of civil rights may be punishment. *Gunning* v. *People*, 86 Ill. App. 174;

Commonwealth v. *Jones*, 10 Bush. (Ky.) 725; *Ex parte Lange*, 18 Wall. (U. S.) 163, 168, 169. But *cf. State* v. *Jones*, 82 N. C. 685.

EMINENT DOMAIN — COMPENSATION — WATERWAY CONSTRUCTED BY CITY THROUGH RAILWAY'S RIGHT OF WAY NECESSITATING STRUCTURAL CHANGES. — A city constructed a canal, with walks on either side, through the right of way of a railroad, in order to join certain lakes used for recreation purposes by its inhabitants. This made it necessary for the railroad to build a bridge. *Held*, that the railroad is entitled to compensation for the value of the land taken but not for the cost of building and maintaining the bridge. *Chicago, M. & St. P. Ry. Co.* v. *City of Minneapolis*, 34 Sup. Ct. 400.

For a discussion of the distinction between taking property under the eminent domain power and under the police power, see NOTES, p. 664.

EQUITY — JURISDICTION — RIGHT TO ENJOIN A THREATENED CRIMINAL PROSECUTION AGAINST A THIRD PARTY. — A statute forbade the shipment by any one, or the receipt for shipment by carriers, of unpasteurized cream to be carried more than sixty-five miles. The business of the complainant, a dairy company, which depended on the receipt of cream from farmers more than sixty-five miles distant, was thereby being ruined because the farmers and railroad company were afraid to ship. Plaintiff, on the ground that the statute was unconstitutional, sought to enjoin the railroad from refusing to accept goods consigned to him, and also to restrain the Attorney-General from prosecuting for breach of the statute. *Held*, that equity will not enjoin a criminal proceeding directed against a party other than the petitioner, nor will the railroad company be enjoined from refusing to accept goods offered. *Milton Dairy Co.* v. *Great Northern Ry. Co.*, 144 N. W. 764 (Minn.).

Whether the court should have refused to grant an injunction against the railroad is not entirely free from doubt. It is usually held that a railroad cannot justify a refusal to serve by pleading an unconstitutional statute. *Southern Express Co.* v. *Rose*, 124 Ga. 581, 53 S. E. 185. It may be contended therefore that the railroad, in signifying its unwillingness to receive shipments, was threatening torts involving irreparable injury to the plaintiff, and should be enjoined. However that may be, the court squarely held that, whether or no the statute was constitutional, it would not restrain the Attorney-General from prosecuting the shippers and the railroad unless the injunction was demanded by the persons threatened with prosecution. For a discussion of whether irreparable damage to one's business relations gives a right to enjoin the prosecution of someone else under an unconstitutional statute, see NOTES, p. 668.

EVIDENCE — GENERAL PRINCIPLES AND RULES OF EXCLUSION — REPAIRS AFTER INJURY AS PROOF OF CAUSATION AND POSSIBILITY OF PREVENTION. — The defendant operated an irrigation canal across the plaintiff's land. To show that his orchard was injured by an enlargement of the canal, and that the seepage could have been prevented by cementing the sides, the plaintiff offered evidence of subsequent repairs which had stopped the damage. *Held*, that the evidence is admissible. *Jensen* v. *Davis and Weber, etc. Co.*, 137 Pac. 635 (Utah).

It is quite well settled that evidence of subsequent repairs cannot be used to show negligence. It is irrelevant, inasmuch as taking precautions for the future is not an admission of culpability in the past; and its admission is against public policy in that it would deter owners from remedying defects. *Aldrich* v. *Concord & M. R. R.*, 67 N. H. 250, 29 Atl. 408. In the principal case the evidence is relevant on both the issues for which it was offered. Proof that the damage began and ended with the uncemented condition of the canal is convincing both as to causation and as to whether there was a practicable